

AMENDED IN ASSEMBLY FEBRUARY 20, 2013

AMENDED IN ASSEMBLY JANUARY 30, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

No. 65

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**Introduced by Assembly Members Achadjian and Lowenthal**  
**(Principal coauthors: Assembly Members Bradford, *Garcia*, Gomez,**  
**Mitchell, and Williams)**

(Principal coauthor: Senator Hill)

**(Coauthors: Assembly Members Alejo, Ammiano, Atkins, Bigelow,**  
***Bloom*, Blumenfield, *Brown*, Buchanan, Ian Calderon, Chávez,**  
**Conway, Dahle, Dickinson, Donnelly, Frazier, ~~Garcia~~, Gatto,**  
**Gordon, Gorell, Grove, Hagman, Hall, Harkey, *Holden*, Jones,**  
**Levine, Logue, Maienschein, Mansoor, Melendez, Morrell, *Mullin*,**  
**Nazarian, Nestande, Olsen, Patterson, Perea, John A. Pérez,**  
**Quirk-Silva, Rendon, Skinner, Stone, Ting, Wagner, Waldron,**  
**Weber, and Wilk)**

(Coauthors: Senators Anderson, Berryhill, Block, Cannella, Emmerson,  
Fuller, Gaines, Huff, Jackson, Knight, Lieu, *Padilla*, Rubio, Walters,  
and Wyland)

January 7, 2013

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An act to amend Section 261 of the Penal Code, relating to crimes.

### LEGISLATIVE COUNSEL'S DIGEST

AB 65, as amended, Achadjian. Crimes: rape.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator where the person submits under the belief that the person committing the act is the victim's spouse, and this

belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would ~~additionally~~ *instead* provide that this type of rape occurs where the person submits under the belief that the person committing the act is ~~the victim's domestic partner, cohabitant, fiancé, fiancée, or someone with whom the victim has a dating relationship.~~ *someone other than the accused.*

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 261 of the Penal Code is amended to
- 2 read:
- 3 261. (a) Rape is an act of sexual intercourse accomplished
- 4 with a person not the spouse of the perpetrator, under any of the
- 5 following circumstances:
- 6 (1) Where a person is incapable, because of a mental disorder
- 7 or developmental or physical disability, of giving legal consent,
- 8 and this is known or reasonably should be known to the person
- 9 committing the act. Notwithstanding the existence of a
- 10 conservatorship pursuant to the provisions of the
- 11 Lanterman-Petris-Short Act (Part 1 (commencing with Section
- 12 5000) of Division 5 of the Welfare and Institutions Code), the
- 13 prosecuting attorney shall prove, as an element of the crime, that
- 14 a mental disorder or developmental or physical disability rendered
- 15 the alleged victim incapable of giving consent.
- 16 (2) Where it is accomplished against a person's will by means
- 17 of force, violence, duress, menace, or fear of immediate and
- 18 unlawful bodily injury on the person or another.
- 19 (3) Where a person is prevented from resisting by any
- 20 intoxicating or anesthetic substance, or any controlled substance,

1 and this condition was known, or reasonably should have been  
2 known by the accused.

3 (4) Where a person is at the time unconscious of the nature of  
4 the act, and this is known to the accused. As used in this paragraph,  
5 “unconscious of the nature of the act” means incapable of resisting  
6 because the victim meets any one of the following conditions:

7 (A) Was unconscious or asleep.

8 (B) Was not aware, knowing, perceiving, or cognizant that the  
9 act occurred.

10 (C) Was not aware, knowing, perceiving, or cognizant of the  
11 essential characteristics of the act due to the perpetrator’s fraud in  
12 fact.

13 (D) Was not aware, knowing, perceiving, or cognizant of the  
14 essential characteristics of the act due to the perpetrator’s fraudulent  
15 representation that the sexual penetration served a professional  
16 purpose when it served no professional purpose.

17 (5) Where a person submits under the belief that the person  
18 committing the act is ~~the victim’s spouse, domestic partner,~~  
19 ~~cohabitant, fiancé, fiancée, or someone with whom the victim has~~  
20 ~~a dating relationship, as defined in subdivision (f) of Section 243,~~  
21 *someone other than the accused*, and this belief is induced by any  
22 artifice, pretense, or concealment practiced by the accused, with  
23 intent to induce the belief.

24 (6) Where the act is accomplished against the victim’s will by  
25 threatening to retaliate in the future against the victim or any other  
26 person, and there is a reasonable possibility that the perpetrator  
27 will execute the threat. As used in this paragraph, “threatening to  
28 retaliate” means a threat to kidnap or falsely imprison, or to inflict  
29 extreme pain, serious bodily injury, or death.

30 (7) Where the act is accomplished against the victim’s will by  
31 threatening to use the authority of a public official to incarcerate,  
32 arrest, or deport the victim or another, and the victim has a  
33 reasonable belief that the perpetrator is a public official. As used  
34 in this paragraph, “public official” means a person employed by  
35 a governmental agency who has the authority, as part of that  
36 position, to incarcerate, arrest, or deport another. The perpetrator  
37 does not actually have to be a public official.

38 (b) As used in this section, “duress” means a direct or implied  
39 threat of force, violence, danger, or retribution sufficient to coerce  
40 a reasonable person of ordinary susceptibilities to perform an act

1 which otherwise would not have been performed, or acquiesce in  
2 an act to which one otherwise would not have submitted. The total  
3 circumstances, including the age of the victim, and his or her  
4 relationship to the defendant, are factors to consider in appraising  
5 the existence of duress.

6 (c) As used in this section, “menace” means any threat,  
7 declaration, or act which shows an intention to inflict an injury  
8 upon another.

9 SEC. 2. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.